

§ 96-11.7. Transfer of account to another employer.

(a) Acquisition of a Business. – When an employer acquires all of the business of another employer, the account of the predecessor must be transferred as of the date of the acquisition to the successor for use in the determination of the successor's contribution rate. This subsection does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy.

(b) Acquisition of Portion of a Business. – When a distinct and severable portion of an employer's business is transferred to a successor employer and the successor employer continues to operate the acquired business, the portion of the account attributable to the transferred business may, with the approval of the Division, be transferred by mutual consent to the successor employer as of the date of the transfer. A successor employer that is a related entity of the transferring employer is eligible for a transfer from the transferring employer's account only to the extent permitted by rules adopted by the Division. No transfer may be made to the account of an employer that has ceased to be an employer under G.S. 96-11.9.

If a transfer of part or all of an account is allowed under this subsection, the successor employer requesting the transfer may make a request for transfer by filing an application for transfer with the Division within two years after the date the business was transferred.

(c) Acquisition by Related Party. – If an employer transfers its business, or a portion thereof, to another person and, at the time of the transfer, there is substantially common ownership, management, or control of the predecessor employer and the transferee, then the portion of the account attributable to the transferred business must be transferred to the transferee as of the date of the transfer for use in the determination of the transferee's contribution rate.

Substantially common ownership, management, or control exists if one or more persons, entities, or other organizations owning, managing, or controlling the business maintain substantial ownership, management, or control of the transferee. Control may occur by means of ownership of the organization conducting the business, ownership of assets necessary to conduct the business, security arrangements or lease arrangements covering assets necessary to conduct the business, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business. Control is not affected by changes in the form of a business, reorganization of a business, or expansion of a business.

(c1) Acquisition to Obtain Lower Contribution Rate. – The account of the predecessor employer will not be transferred if the Division finds that a person formed or acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

(d) Contribution Rate. – If the effective date of a transfer of an account under this section is after the computation date in a calendar year, the Division must recalculate the contribution rate for the predecessor employer and the successor employer based on their account balances on the effective date of the account transfer.

(e) Liability for Contributions. – An employer that, by operation of law, purchase, or otherwise is the successor to an employer liable for contributions becomes liable for contributions on the day of the succession. This subsection does not affect the successor's liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

(f) Deceased or Insolvent Employer. – When the business of a deceased person or of an insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and contribution rate of the deceased person or insolvent debtor without the necessity of filing an application for the transfer of the account.

(g) Continuation of Existing Account. – Any transferee subject to a complete transfer of account under this section must not request or maintain an account with the Division other than the account of the existing business. If a transferee receives a new account and the Division subsequently finds that the transferee is subject to a complete transfer of account under this section, the Division must recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business. (2013-2, s. 4; 2013-224, s. 19; 2016-4, s. 1; 2017-8, s. 4(a).)